General Drivers, Warehousemen and Helpers Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Stone Container Corporation, Corrugated Container Division) *and* John H. Walker, Jr. Case 16–CB–3335

May 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

Upon a charge filed by John H. Walker Jr., on April 18, 1989, the General Counsel of the National Labor Relations Board issued a complaint on May 19, 1989, against the General Drivers, Warehousemen and Helpers Local 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, the Respondent, alleging that the Respondent violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Copies of the charge and complaint and notice of hearing were served on the parties. Thereafter, the Respondent filed an answer denying the commission of any unfair labor practices.

On August 2, 1989, the parties filed a stipulation of facts and a motion to transfer the case to the Board. The parties agreed that the stipulation of facts and attached exhibits shall constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties further waived a hearing before an administrative law judge, the issuance of an administrative law judge's decision, and indicated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and an Order.

On September 28, 1989, the Board issued its order approving the stipulation and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Stone Container Corporation (the Employer), a Delaware corporation with a principal place of business in Grand Prairie, Texas, is engaged in the manufacture of corrugated paperboard containers and packaging material. During the 12 months preceding the execution of the stipulation of facts, a representative period, the Employer, in the course and conduct of its business operations, purchased and received at its Grand Prairie facility goods, materials, equipment, and supplies valued in excess of $50,000 directly from points located outside the State of Texas. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We further find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The chief issue presented in this case is whether the Respondent violated Section 8(b)(1)(A) and (2) by refusing to honor the request of Charging Party Walker to revoke his previously executed dues-checkoff authorization on his resignation from the Respondent.

A. *Facts*

The Employer and the Respondent have had a collective-bargaining relationship since 1979 when the Respondent was certified. Pursuant to that relationship, the parties entered into a collective-bargaining agreement effective from December 30, 1985, through December 1, 1988, which was succeeded by a new contract effective from December 2, 1988, through December 31, 1991. Neither contract contains a provision requiring union membership but both permit employees to have the Employer deduct initiation fees and monthly dues from their wages and remit them to the Respondent.[1] Dues-checkoff authorizations, which are revocable as provided for in the checkoff authorization, are utilized by the Respondent to collect monthly deductions from the employees. On August 3, 1988, Walker signed a checkoff authorization agreement authorizing the Employer to deduct and remit to the Respondent every month ''union dues consisting of initiation fees, monthly fees, and uniform assessments owing to such Local Union as a result of membership therein . . . .''[2] Pursuant to this authorization, month-

[1] Art. 2.6 of both agreements provides:

The Employer will deduct Union dues (consisting of initiation fees and monthly dues) each month from the earnings of an employee who authorizes such deductions by signing the authorization card currently in use by the Union. A signed copy of which has been furnished to the Employer and such deductions shall be made in accordance with provisions of said authorization form, provided it is in conformance with applicable law.

Prior to the fifth (5th) day of each month, the Union shall furnish the Employer a list of employees from whose earnings deductions are to be made for such dues and the amounts to be deducted. The Employer will deduct said amounts from the first payroll period after receiving said list of deductions and remit to the Local Union's Secretary-Treasurer within seven (7) days after the deduction is made, together with a list of the names of the employees for whom deductions have been made and the respective amounts of such deductions.

If the dues of an employee cannot be checked off in any month because his wages are insufficient, the Employer will deduct such whenever that employee's earnings permit.

The Union agrees that it will indemnify and save the Employer harmless from any and all liability, claim responsibility, damage or suit which may arise out of any action taken by the Employer in accordance with the terms of this Article or in reliance upon the authorization mentioned herein.

[2] The checkoff authorization signed by Walker reads:

Continued

ly deductions of union dues from Walker's wages commenced in November 1988.

February 21, 1989, Walker notified the Respondent by certified letter that he wished to resign his union membership and discontinue the deductions of dues from his paycheck. The Respondent granted Walker's request to resign his membership, in that it removed him from its membership rolls on March 1, 1989, as a result of that letter. However, the Respondent did not respond to the letter or otherwise inform Walker that his request had been granted until 4 months later in July. The Respondent did not, however, honor Walker's request to cease dues deductions because it considered his request untimely under the terms of his previously executed checkoff authorization. Since the time of Walker's request to revoke his checkoff authorization, the Respondent has continued to accept dues which have been deducted from his wages every month.

B. *Contentions of the Parties*

The General Counsel offers three alternative theories on which to base a violation of Section 8(b)(1)(A) and (2). First, applying the principles of *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985), the General Counsel contends that the Respondent's refusal to recognize Walker's revocation of his dues-checkoff authorization was an unlawful restriction on his Section 7 right to resign union membership. Second, the General Counsel urges the adoption of the view taken by former Member Johansen in *Postal Service (Dalton)*, 279 NLRB 40, 42 (1986), enf. denied 827 F.2d 548 (9th Cir. 1987), decision on remand 302 NLRB No. 50 (Mar. 29, 1991). Under that view, the General Counsel submits that even if Walker's request to revoke his dues-checkoff authorization was untimely, as claimed by the Respondent, his resignation from membership, which the Respondent admittedly accepted, reduced his dues obligation to zero. Thus, according to this theory, the Respondent violated the Act by continuing to accept and causing the Employer to deduct from Walker's paycheck any amount greater than zero. Finally, the General Counsel contends that the Respondent's conduct was unlawful under *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984), in which the Board held that resignation of union membership will revoke a checkoff authorization, even if the resignation does not occur during the allowable revocation period, where the authorization itself makes payment of dues a ''quid pro quo'' for union membership. The General Counsel contends that the language of the checkoff authorization signed by Walker provides that payment of dues is a quid pro quo for union membership.

The Respondent contends that the checkoff authorization that Walker voluntarily signed is a contract entitled to full force and effect unless revoked in accordance with the provisions set forth therein, and because he did not comply with those provisions which prohibit revocations except during certain identifiable annual periods or at the expiration of the bargaining agreement, his revocation was untimely and, therefore, he lawfully could be required to continue paying dues. The Respondent further contends that nothing in this case restricts Walker's right to resign and that it is ''nonsensical'' to say that he is coerced or restricted by the voluntary act he undertook in selecting to pay his dues, through checkoff, for at least a 1-year period. In addition, the Respondent contends that Section 302 of the Act affirmatively authorizes checkoff authorizations, like the one Walker signed, to be irrevocable for up to 1 year and, anticipating the General Counsel's quid pro quo theory of violation, states that the language of Walker's authorization does not state that it is in consideration of union membership. Thus, the Respondent, in effect, takes the position that, even applying *Eagle Signal*, it acted lawfully in rejecting Walker's revocation request. Finally, the Respondent argues that the charge herein is time-barred by Section 10(b) of the Act and that the complaint must be dismissed.

Discussion

In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[3] the Board acknowledged judicial criticism of the *Eagle Signal* analysis[4] and set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board recognized the fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must

I, the undersigned member of Local 745 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America herewith authorize my employer to deduct from my wages each and every month my union dues consisting of initiation fees, monthly fees, and uniform assessments owing to such Local Union as a result of membership therein, and direct that such amounts so deducted be sent to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization and assignment shall be irrevocable for the term of applicable contract between the Union and the Company, or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, unless I give written notice to the Company and the Union at least 60 days and not more than 75 days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

[3] 302 NLRB 322 (1991).

[4] See *NLRB v. Postal Service*, 833 F.2d 1195 (6th Cir. 1987); *NLRB v. Postal Service*, 827 F.2d 548 (9th Cir. 1987).

be clear and unmistakable.[5] In order to give full effect to these fundamental labor policies, the Board stated that it would:

> construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing.* We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has had a change of heart and wants to revoke the authorization. [Id. at 328–329.][6]

Applying the analysis of *Lockheed* to the stipulated facts in this case, we find that in signing the checkoff authorization at issue here, Walker did not clearly and unmistakably waive his right to refrain from assisting the Respondent Union for periods when he was not a member. As in *Lockheed*, all Walker clearly agreed to do was to allow certain sums to be deducted from his wages and remitted to the Respondent for payment of his ''union dues consisting of initiation fees, monthly fees, and uniform assessments . . . .'' He did not clearly agree to have deductions made even after he had submitted his resignation from union membership. We thus find that the partial wage assignment made by Walker was conditioned on his union membership and was revoked when he ceased being a union member. We therefore find that the Respondent's refusal to accept Walker's revocation request restrained and coerced him in the exercise of his Section 7 rights. Accordingly, we find that the Respondent violated Section 8(b)(1)(A) of the Act.[7]

[5] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

[6] In *Lockheed*, the Board left open the question of whether this test would be applicable in the context of a lawful union-security provision. In the absence of a union-security clause requiring union membership here, the *Lockheed* test is applicable to this case.

[7] We find no record evidence to support the complaint allegation that the Respondent caused the Employer to continue deducting Walker's membership dues after he resigned from the Union. Therefore, we dismiss the 8(b)(2) allegation of the complaint. Further, in light of the parties' stipulation that the Respondent granted Walker's request to resign his union membership, removed him from its rolls on March 1, 1989, and in the absence of any evidence that it otherwise subsequently treated Walker as if he were still a member, we shall also dismiss the complaint allegation that the Respondent violated Sec. 8(b)(1)(A) by refusing to honor his request to resign.

We reject the Respondent's contention that the 10(b) limitations period commenced on August 3, 1988, when Walker signed his checkoff and that his April 18, 1989 unfair labor practice charge was thus untimely filed. Rather, we find that the 10(b) period began when Walker learned in March 1989, that the Respondent refused to honor his February 21, 1989 request to revoke his checkoff authorization. *Pennsylvania Energy Corp*., 274 NLRB 1153, 1155–1156 (1985); *Burgess Construction*, 227 NLRB 765, 766 (1977).

CONCLUSION OF LAW

By refusing to honor the revocation of dues-checkoff authorization previously executed by John H. Walker Jr., after he resigned membership in the Union, where the terms of the voluntarily executed checkoff authorization did not clearly and explicitly impose any postresignation dues obligation on him, the Respondent has restrained and coerced Walker in the exercise of his Section 7 rights and has violated Section 8(b)(1)(A) of the Act.

REMEDY

Having found that the Respondent has engaged in the unfair labor practice described above, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent must give full force and effect to Walker's revocation of his checkoff authorization. The Respondent shall also make him whole for any moneys deducted from his wages for the period following his resignation of union membership, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, General Drivers, Warehousemen and Helpers Local Union 745, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Dallas, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to honor any employee's revocation of dues-checkoff authorization after the employee has resigned membership in the Union, where the terms of the executed checkoff authorization does not clearly and explicitly impose any postresignation dues obligation on the employee and where there is no valid union-security clause in effect.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole employee John H. Walker Jr., for any moneys deducted from his wages for the period following his resignation from union membership, with

interest as set forth in the remedy section of this decision.

(b) Post at its offices and meeting halls in Dallas, Texas, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by the Employer, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges unfair labor practices not found herein.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor any employee's revocation of his dues-checkoff authorization after the employee has resigned membership in the where the terms of the voluntarily executed checkoff authorization does not clearly and explicitly impose any postresignation dues obligation on the employee and where there is no valid union-security clause in effect.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole employee John H. Walker Jr., for any moneys deducted from his wages for the period following his resignation from union membership, with interest.

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL 745, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO